

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WINDOWIZARDS, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
CASTLE "THE WINDOW PEOPLE", INC.	:	NO. 00-4680

MEMORANDUM AND ORDER

HUTTON, J.

May 30, 2001

Presently before this Court are the Defendant's Motion to Dismiss the Plaintiffs' Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) or for a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e) (Docket No. 4), and the Plaintiff's response thereto (Docket No. 5).

I. BACKGROUND

On September 14, 2000, the Plaintiff, Windowizards, Inc., filed the instant complaint against the Defendant, Castle "The Window People", Inc.. In the complaint, the Plaintiff alleges that the Defendant's representatives "made false and disparaging remarks about [the Plaintiff] to potential customers." See Pl.'s Compl. ¶ 13. As developed in the complaint, the false and disparaging remarks concerned the Plaintiff's status in bankruptcy. See Pl.'s Compl. ¶¶ 14-17. The Plaintiff claims that these statements were falsely made as a strategy to deter potential customers from dealing with the Plaintiff. See Pl.'s Compl. ¶ 19. More

specifically, the Plaintiff alleges that: (1) sales representative Daniel Diamond told a potential customer that the Plaintiff was in the middle of a bankruptcy proceeding in February of 2000, (2) representative Lou Berger told a potential customer that the Plaintiff was bankrupt in or about April of 2000, and (3) representatives Bill Burger and Robert Moffei made false statements regarding Plaintiff being bankrupt to potential customers in the February of 2000 through May of 2000 time frame. See Pl.'s Compl. ¶¶ 14, 15, & 17. According to the complaint, the Plaintiff was not in bankruptcy at that time. See Pl.'s Compl. ¶ 18. The complaint alleges that these false statements violated federal and state law including unfair competition, tortious interference with prospective customers, defamation, trade libel, and a violation of the Lanham Act. See Pl.'s Compl. ¶¶ 21-34. On November 8, 2000, the Defendant filed this motion to dismiss or for a more definite statement asserting that the Plaintiff's allegations are not sufficient to state a claim of defamation and therefore, the Plaintiff's entire complaint should be dismissed.

II. STANDARD OF REVIEW

When considering a motion to dismiss a complaint for failure to state a claim under Rule 12(b)(6), this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain

that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)). The Federal Rules of Civil Procedure do not require detailed pleading of the facts on which a claim is based, they simply require "a short and plain statement of the claim showing that the pleader is entitled to relief," enough to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." See Fed. R. Civ. P. 8(a)(2) (West 2001); see also Conley v. Gibson, 355 U.S. 41, 47 (1957). A motion for a more definite statement under Federal Rule of Civil Procedure 12(e) is only "appropriate when the pleading is 'so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith, without prejudice to himself.'" Sun Co., Inc. v. Badger Design & Constructors, Inc., 939 F.Supp. 365, 374 (E.D.Pa. 1996).

Pointing to a heightened pleading standard in Pennsylvania for defamation, the Defendant argues that the Plaintiff's complaint is facially defective because it does not set out specifically what defamatory statements were made, by whom, and to whom. See Ersak v. Township of Springfield, Delaware Cty., 822 F.Supp. 218, 223 (E.D.Pa. 1993). However, the pleading standards by their nature are procedural and therefore governed by the federal rules of civil procedure as opposed to state practice. See GE Capital Mort. Serv.

v. Pinnacle Mort., 897 F.Supp. 854, 867 (E.D.Pa. 1995). While there is technically no heightened pleading standard for defamation actions under the federal rules, the actual application of the standard "tends to be more stringent than ordinary civil suits." See 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1245 (2d ed. 1990).

III. DISCUSSION

Even using a more stringent application of the pleading standard contained in Rule 8 of the Federal Rules of Civil Procedure, the Plaintiff has appropriately pled a claim for defamation. Contrary to the Defendant's assertion, the Plaintiff's complaint sets forth with relative specificity the basis for their claim. The Plaintiff specifically alleges the representatives who made the defamatory statements (Daniel Diamond, Lou Berger, Bill Burger, and Robert Moffei), when the statements were made (February through May of 2000), the content of the statements (regarding the Plaintiff's bankruptcy), and to whom the statements were made (potential customers). While the customers' names are not specifically identified, the context of the statements is clear enough to put the Defendant on notice of "what the plaintiff's claim is and the grounds upon which it rests." In addition, there is sufficient information for the opposing party to respond in good faith to the Plaintiff's complaint precluding the Defendant's motion for a more definite statement.

Moving beyond the specificity of the Plaintiff's complaint, it satisfies the substantive requirements of pleading a defamation claim. To set forth a claim for defamation under Pennsylvania law, a Plaintiff must allege (1) the defamatory character of the communication, (2) its publication by the Defendant, (3) its application to the Plaintiff, (4) the understanding by the recipient of its defamatory meaning, (5) the understanding by the recipient of it as intended to be applied to the plaintiff, (6) special harm resulting from its publication, and (7) abuse of a conditionally privileged occasion. See Pa. Cons. Stat. Ann. § 8343(a) (West Supp. 2000). A statement is of defamatory character if, looking at it in context with the effect it is reasonably calculated to produce in the mind of the average person, "it 'tends so to harm the reputation of another as to . . . deter third persons from associating or dealing with him.'" Remick v. Manfredy, 238 F.3d 248, 261 (3d Cir. 2001). Special harm represents specific monetary or out-of-pocket loss as a result of the defamation. See id. The Court finds that falsely stating that a company is in the middle of a bankruptcy proceeding or is bankrupt while speaking with a potential customer is defamatory. In addition, the allegations in the complaint clearly indicate that the statements were published by the Defendant, the statements applied to the Plaintiff, the potential customers understood the defamatory meaning, and the customers understood the statements application to

the plaintiff. Also, the Plaintiff satisfies the requirement for pleading special harm by alleging that the defamation caused injury in the form of lost sales. See Pl.'s Compl. at ¶ 32. Finally, the Defendant has not asserted that they are protected by any conditional privilege at this point in the proceedings. For the foregoing reasons, the Court finds the Plaintiff has adequately plead a claim of defamation against the Defendant.

While the Defendant sought dismissal of the Plaintiff's entire complaint, the only argument put forth was that the Plaintiff's complaint failed to state a cause of action for defamation. The Defendant's motion argues that the deficiencies in the defamation claim apply equally to all of the claims and therefore the entire complaint should be dismissed. As the Court finds that there are no deficiencies in the Plaintiff's defamation claim, the Court denies the Defendant's motion to dismiss the Plaintiff's complaint in its entirety.

An appropriate Order follows.

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O R D E R

AND NOW, this 30th day of May, 2001, upon consideration of the Defendant's Motion to Dismiss the Plaintiffs' Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) or for a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e) (Docket No. 4), and the Plaintiff's response thereto (Docket No. 5), IT IS HEREBY ORDERED that the Defendant's motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.